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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/784,488	02/15/2001	Cheryl L. Galante	00216-528001/T-680	1716
26161	7590	05/02/2005	EXAMINER	
FISH & RICHARDSON PC 225 FRANKLIN ST BOSTON, MA 02110			LAMM, MARINA	
			ART UNIT	PAPER NUMBER
			1616	

DATE MAILED: 05/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/784,488

Applicant(s)

GALANTE ET AL.

Examiner

Marina Lamm

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 5, 7-9, 11, 13, 16-18, 20, 21, 23-25, 27, 28, 30-35, 37-41, 43, 44, 46, 47, 50, 51, 53, 54, 57, 61 and 63-65 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Continuation of Disposition of Claims: Claims pending in the application are 1,5,7-9,11,13,16-18,20,21,23-25,27,28,30-35,37-41, 43, 44,46,47,50,51,53,54,57,61 and 63-65.

### **DETAILED ACTION**

Acknowledgment is made of the amendment filed 12/30/04. Claims pending are 1, 5, 7-9, 11, 13, 16-18, 20, 21, 23-25, 27, 28, 30-35, 37-41, 43, 44, 46, 47, 50, 51, 53, 54, 57, 61 and 63-65. Claims 6, 12, 22, 29, 36, 42, 48, 49, 55 and 56 have been cancelled. Claims 1, 7-9, 11, 13, 16-18, 20, 21, 24, 25, 27, 28, 31, 32, 34, 35, 37, 38, 40, 41, 43, 44, 47, 50, 51, 53, 54, 57 and 63-65 have been amended.

#### ***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1, 5, 7-9, 11, 13, 16-18, 20, 21, 23-25, 27, 28, 30-35, 37-41, 43, 44, 46, 47, 50, 51, 53, 54, 57, 61 and 63-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swaile et al. (US 5,968,489) in view of either Shelton (US 4,202,879) or Banowski et al. (WO 99/23998 as translated by US 6,569,438) or Henriksen (US 1,791,359), all of record.

Swaile et al. teach antiperspirant formulations containing antiperspirant actives (0.1-99.9% by weight, most preferably 6-26% by weight), volatile silicones (10-90% by weight), polyols (0.1-99% by weight with 5% by weight exemplified) and gelling agents such as waxes (e.g. stearic acid, beeswax, etc.) and/or dibenzylidene alditols, as well as optional ingredients including pigments and dyes. See col. 6, lines 51-65; col. 9; col. 10, lines 56-67; col. 11, lines 1-15; col. 14, lines 55-61. The compositions of Swaile et al. can be in the form of sticks, soft solids and multiphase systems. See col. 15, lines

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29-61; Examples 9 and 13. The Swaile reference does not teach the claimed first and second compositions that are different in color. However, Henriksen teaches making multicolor soaps for presenting a distinctive and easily recognizable appearance. See lines 1-26; Figures. Further, Shelton teaches multiphase stick antiperspirant compositions, which can be different in color and/or transparency, which "possess a unique and appealing visual aesthetic quality." See col. 15, lines 5-6, 14-15, 26-35, 61-68. Furthermore, Banowski et al. teach multiphase, multicolor cosmetic stick preparations, which "can be made aesthetically very attractive through differences in the transparency, coloring or pigmentation of the phases." See col. 1, lines 57-60. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the antiperspirant formulations of Swaile et al. such that to make them as multiphase, multicolor formulations. One having ordinary skill in the art would have been motivated to do this to obtain visual aesthetic appeal and distinctive, easily recognizable appearance as suggested by either Shelton or Banowski et al. or Henriksen.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

### ***Response to Arguments***

3. Applicant's arguments with respect to the rejections over Shelton '879 and Shelton '948 references have been considered but are moot in view of the new ground(s) of rejection.

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4. Applicant's arguments, with respect to the rejections over Banowski et al. (WO 00/67712) and Look et al. (US 2002/0041788) have been fully considered and are persuasive. The rejections have been withdrawn.

***Conclusion***

5. No claim is allowed at this time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (571) 272-0618. The examiner can normally be reached on Mon-Fri from 11am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached at (571) 272-0887.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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4/28/05

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